

FIRST DIVISION
March 26, 2012

No. 1-10-1299

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN KRUPA,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
)	
v.)	No. 09 CH 14764
)	
)	
GARRY F. McCARTHY, Superintendent of)	
Police of the City of Chicago, and)	
the POLICE BOARD OF THE CITY OF)	
CHICAGO,)	
)	Honorable
)	Rita M. Novak,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court. Presiding justice Hoffman and justice Rochford concurred in the judgment.

ORDER

Held: Board's decision to discharge Officer John Krupa from his position as a Chicago police officer for violating Chicago Police Department rules 2, 6 and 14 was not arbitrary and unreasonable or unrelated to the requirements of service.

¶ 1 The Police Board of the City of Chicago (Board) and the superintendent of police appeal from an order of the circuit court that reversed the Board's decision to discharge Chicago Police Officer John Krupa. We reverse the circuit court and reinstate the Board's decision.

¶ 2 This case arose from an internal investigation conducted by the Internal Affairs Division of the Chicago Police Department. The investigation stemmed from a complaint by a man named Victor Perez alleging that Chicago police officers planted narcotics on him during a traffic stop and arrested him based on the planted evidence. The investigation eventually focused on Officer Krupa and his partner.

¶ 3 Investigators conducted a field search of Officer Krupa's squad car while the officer was on patrol duty. The investigators instructed Officer Krupa to step away from his squad car and to leave his personal belongings in the vehicle. A drug-sniffing dog was brought to the vehicle. The dog alerted to the odor of narcotics on a small green bag and a large black nylon duffel bag both belonging to Officer Krupa.

¶ 4 The investigators decided to bring the bags back to the police station to be searched rather than search them on the street. Officer Krupa and his bags were taken to a second-floor administrative office at the police station where he was instructed to place the bags in an open area on the floor. The officer refused to consent to have his bags searched. While the investigators prepared to obtain a search warrant to search the bags, they instructed Officer Krupa

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not to touch his bags and not to leave the administrative office unless he was accompanied by an escort.

¶ 5 Despite receiving such instructions, Officer Krupa left the police station unaccompanied by an escort and his small green bag was missing. After about 20 minutes, Officer Krupa was seen walking back to the police station. He was sweaty and breathing heavily, and he was carrying his small green bag. One of the investigators testified that when Officer Krupa returned to the administrative office, he was out of breath, flushed, and sweating.

¶ 6 The investigators maintained that Officer Krupa disobeyed their direct orders by leaving the administrative office unaccompanied and by removing potentially inculpatory evidence which had been recovered from the officer's squad car. The investigators further maintained that Officer Krupa later made a false report to investigators when he denied having been ordered not to leave the administrative office or touch the evidence.

¶ 7 The superintendent of police determined that Officer Krupa's conduct violated the following rules of Article V of the rules and regulations of the Chicago Police Department. Rule 2, which prohibits "[a]ny action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;" Rule 6, "[d]isobedience of an order or directive, whether written or oral;" and Rule 14, which prohibits "making a false report, written or oral." The superintendent recommended that Officer Krupa be discharged from the Chicago Police Department.

¶ 8 Following a five-day hearing, the Board found Officer Krupa guilty of the charges and he was discharged from his position as a Chicago police officer. Officer Krupa sought

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administrative review of the Board's decision in the circuit court.

¶ 9 The circuit court affirmed the Board's findings of guilt but determined that the penalty of discharge was excessive. The circuit court stated that there was "plenty of evidence to support the board's decision with regard to the violation," but that the more difficult question concerned the penalty "as against this one incident."

¶ 10 The circuit court remarked that "notwithstanding characterizations of flight and so on, it doesn't appear that there really is evidence of flight." The circuit court also expressed concern that the Board had not "explained in greater detail" why it had determined that the officer's discharge was warranted. The circuit court remanded the matter back to the Board with directions to consider a penalty less than discharge.

¶ 11 Upon remand, the Board stated that after reviewing and reconsidering the matter, it remained "convinced that a penalty of discharge" was warranted. The Board stated in part as follows:

"Officer Krupa's misconduct related directly to the core responsibilities of a police officer. As part of a legitimate and significant Chicago police investigation, trained drug-sniffing dogs alerted on two of Officer Krupa's personal bags, kept in his squad car. There is no question, on this record, that once the officer and his bags were removed to the 10th District administrative offices, he was given multiple direct orders to not leave and to not touch or remove the bags at issue. He knew full well that the Department suspected the bags contained contraband. Officer Krupa was asked for his consent to search the bags and given Miranda warnings, and the Department began the process of

obtaining a search warrant. If Officer Krupa's green bag did not contain contraband, it was in Officer Krupa's interest, more than anyone else's, to ensure that the chain of custody for the bag was not broken and that it was opened in everyone's presence so all could see that there was nothing amiss. Instead, Officer Krupa directly violated the orders given by leaving with one of the suspect bags. * * *

The orders given to Officer Krupa related to a serious criminal investigation.

Offier Krupa's callous disregard of the orders destroyed this criminal investigation. No officer should ever engage in such conduct."

¶ 12 Nonetheless, in order to comply with the circuit court's remand order, the Board ordered that Officer Krupa be suspended for a period of five years. The circuit court entered an order finding that the Board's order imposing a five-year suspension was final and appealable. The Board and the superintendent of police now appeal the circuit court's order reversing the Board's decision discharging Officer Krupa and remanding the matter for imposition of a lesser penalty.

¶ 13 ANALYSIS

¶ 14 In reviewing a final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2002)), we review the administrative agency's decision and not that of the circuit court. *XL Disposal Corp. v. Zehnder*, 304 Ill. App. 3d 202, 207 (1999); *Krocka v. Police Board of the City of Chicago*, 327 Ill. App. 3d 36, 46 (2001). A reviewing court's scope of review of an agency's decision to discharge a public employee is a two-step process. *County of Cook v. Illinois Local Labor Relations Board*, 302 Ill. App. 3d 682, 692 (1998). First, the reviewing court must determine if the agency's findings of fact are contrary to the manifest weight of the evidence.

Department of Mental Health and Developmental Disabilities v. Civil Service Commission, 85

Ill. 2d 547, 550-51 (1981). Second, the court must determine if the findings of fact provide a sufficient basis for the agency's determination that "cause" for discharge exists. *Id.*

¶ 15 "Cause" has been defined as "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position." *Department of Mental Health*, 85 Ill. 2d at 551, quoting *Kreiser v. Police Board of the City of Chicago*, 40 Ill. App. 3d 436, 441 (1976). Because a police board is in the best position to determine the effect of an officer's conduct on the operations of the Department, its determination of "cause" is given considerable deference. *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 530 (1998). An administrative agency's finding of "cause" for discharge should not be overturned unless it is arbitrary and unreasonable or unrelated to the requirements of service. *County of Cook*, 302 Ill. App. 3d at 692.

¶ 16 In this case, the circuit court affirmed the Board's findings of fact as to guilt, and Officer Krupa did not appeal those findings. As a result, these findings of fact are final and no longer open to challenge. See, e.g., *Marco v. Doherty*, 276 Ill. App. 3d 121, 124-25 (1995). In his appellate brief, Officer Krupa acknowledges that the "Board's factual findings are not at issue in this appeal." Thus, the only question before us is whether the Board's action in discharging Officer Krupa was arbitrary and unreasonable or unrelated to the needs of service.

¶ 17 We find that the Board's imposition of discharge as a penalty was neither arbitrary and unreasonable nor unrelated to the needs of service. In the instant case, we believe that Officer

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Krupa's conduct, when viewed in its entirety, warrants the sanction of discharge.

¶ 18 The essence of the misconduct for which Officer Krupa was found guilty focuses directly upon his lack of integrity. Officer Krupa exhibited a lack of integrity and trustworthiness when he disobeyed his superiors' orders not to touch his bags and not to leave the administrative office unless he was accompanied by an escort. The officer was aware that a drug-sniffing dog had alerted on his bags and that investigators planned to search the bags as soon as they obtained a search warrant.

¶ 19 Since Officer Krupa knew that investigators suspected his bags might contain contraband, it was in his interest to comply with his superiors' orders and insure the integrity of the investigation so that he could clear his name if the suspicion was unfounded. Officer Krupa's actions thwarted police efforts to investigate possible police misconduct and it raised serious questions about his honesty and integrity.

¶ 20 "Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer." *Village of Oak Lawn v. Human Rights Comm'n*, 133 Ill. App. 3d 221, 224 (1985). "[A]s the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness." *Sindermann v. Civil Service Comm'n*, 275 Ill. App. 3d 917, 928 (1995).

¶ 21 In this case, it was in no way arbitrary or unreasonable for the Board to conclude that Officer Krupa exhibited conduct incompatible with continued service as a police officer. The Board's decision to discharge the officer from his position as a Chicago police officer was not arbitrary, unreasonable, or unrelated to the requirements of service. Accordingly, we reverse the

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circuit court and reinstate the Board's decision discharging Officer Krupa from his position as a Chicago police officer.

¶ 22 Reversed; Board's decision reinstated.